

LEGAL UPDATES

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New Program to Provide Relief to Restaurant Industry

RESTAURANT REVITALIZATION FUNDING PROGRAM APPLICATIONS WILL BE ACCEPTED STARTING MAY 3, 2021

The Restaurant Revitalization Funding (RRF) program, established pursuant to the American Rescue Plan Act signed into law March 11, 2021, provides eligible businesses with the opportunity to recoup a portion of their pandemic-related revenue losses. Recently, the Small Business Administration (SBA) published a Program Guide for the RRF program and has indicated that – beginning April 30, 2021 at 9:00 a.m. EDT – businesses can pre-register for the program. Then, applications may be submitted starting May 3, 2021 at 12:00 p.m. EDT. This alert discusses some of the key provisions of the RRF program. Additional information can be found on the SBA’s website.

Eligibility for RRF

RRF funds are reserved for the following businesses: (1) restaurants, food stands, food trucks, food carts, caterers, saloons, taverns, bars, and lounges; (2) bakeries, brewpubs, tasting rooms, taprooms, breweries, microbreweries, wineries, distilleries, and inns, if at least 33% of their gross receipts are on-site sales to the public; (3) licensed facilities or premises of a beverage alcohol producer where the public may taste, sample, or purchase products; (4) snack and nonalcoholic beverage bars; and (5) other similar places of business in which the public or patrons assemble for the primary purpose of being served food or drink (33% gross receipts test applies).

The program is not available to: (a) franchisees of a franchisor that is not listed on the SBA Franchise Directory with a franchise identifier code; (b) state or local government-operated businesses; (c) entities that, as of March 13, 2020,

owned or operated (together with any affiliated business) more than 20 locations (regardless of whether those locations do business under the same or multiple names or are in different industries); (d) entities that have a pending application for, or have received, a Shuttered Venue Operators Grant; (e) publicly-traded companies (defined as an entity that is majority owned or controlled by an entity that is an issuer, the securities of which are listed on a national securities exchange under section 6 of the Securities Exchange Act of 1934); (f) entities that are permanently closed; (g) entities that have filed for bankruptcy, unless the entity is operating under an approved plan of reorganization under either Chapter 11, Chapter 12, or Chapter 13 of the Bankruptcy Code; (h) non-profit organizations; or (i) businesses requesting less than \$1,000. Franchisors who are not already listed on the SBA Franchise Directory must submit their franchise documents to the SBA for review in order for their franchisees to become eligible for the RRF program. Businesses that are temporarily closed, or that are actively working on opening with expenses incurred as of March 11, 2021, may be eligible.

Amount of grant

The formula for determining the amount of the grant depends on the applicant's operating date. The "operating" date is the day the entity started making sales. In general, the amount of the grant equals the applicant's "pandemic-related revenue loss" up to \$5 million per location (not to exceed \$10 million total for the applicant and any affiliated businesses). The amount of the grant is generally calculated as follows, depending on the operating date:

For those businesses that were in operation (making sales) prior to or on January 1, 2019, the grant amount equals [Gross receipts for 2019] minus [Gross receipts for 2020] minus [Amount of all Paycheck Protection Program (PPP) loan funds received];

For those businesses that began operations (making sales) partially through 2019, they can elect to calculate their grant amount as:

[Average monthly gross receipts for 2019 multiplied by 12] minus [Gross receipts for 2020] minus [Amount of all PPP loan funds received]; or

[Eligible expenses incurred between February 15, 2020 and March 11, 2021] minus [Gross receipts for 2020] minus [Amount of all PPP loan funds received].

For those businesses that began operations (making sales) on or between January 1, 2020 and March 10, 2021; and for businesses that have not yet opened but – as of March 11, 2021 – have incurred eligible expenses, the grant amount equals: [Eligible expenses incurred on or between February 15, 2020 and March 11, 2021] minus [Gross receipts for 2020 and 2021] minus [Amount of all PPP loan funds received].

“Gross receipts” are generally those reported on the federal tax returns or the point-of-sale reports (including IRS Form 1099-K) for the business. The RRF Program Guide provides a more detailed definition of “gross receipts” and other key terms. The types of “eligible expenses” for businesses that began operations (making sales) in 2020 or 2021 are the same as the eligible uses of funds described in the next section below.

The minimum funding amount is \$1,000; therefore, applicants requesting less than \$1,000 in funding will not be accepted or approved.

Use of funds

Grant funds may be used for the following expenses that were/are incurred between February 15, 2020 and March 11, 2023:

Payroll costs (including sick leave and costs related to the continuation of group health care, life, disability, vision, and dental benefits during periods of paid sick, medical, or family leave, and group health care, life, disability, vision, or dental insurance premiums);

Payments of principal and interest on any business mortgage obligation (not including any prepayment of principal on a mortgage obligation);

Business rent payments, including rent under a lease agreement (which shall not include any prepayment of rent);

Business debt service (both principal and interest, but not including any prepayment of principal or interest);

Business utilities for the distribution of electricity, gas, water, telephone, or internet access, or any other utility that is used in the ordinary course of business for which service began before March 11, 2021;

Business maintenance expenses, including on walls, floors, deck surfaces, furniture, fixtures, and equipment;

Construction of outdoor seating;

Business supplies, including protective equipment and cleaning materials;

Business food and beverage expenses, including raw materials for beer, wine, or spirits;

Covered supplier costs, which is an expenditure made by the eligible entity to a supplier of goods for the supply of goods that are:

Essential to the operations of the entity at the time at which the expenditure is made; and

Is made pursuant to a contract, order, or purchase order in effect at any time before receipt of the Restaurant Revitalization funds; or

With respect to perishable goods, a contract, order, or purchase order in effect before or at any time during the covered period; and

Business operating expenses (which are defined as business expenses incurred through the normal business operations that are necessary and mandatory for the business – i.e., rent, equipment, supplies, inventory, accounting, training, legal, marketing, insurance, licenses, fees).

If the business permanently closes after receiving funds, the covered period will end when the business permanently closes or on March 11, 2023, whichever occurs sooner. Any funds not spent on eligible expenses by the time the covered period ends must be returned to the government.

Set asides and priority period

A total of \$28.6 billion has been appropriated to the RRF program. \$5 billion has been set aside for applicants with 2019 gross receipts of not more than \$500,000. Another \$4 billion has been set aside for applicants with 2019 gross receipts from \$500,001 to \$1,500,000. Finally, another \$500 million has been set aside for applicants with 2019 gross receipts of not more than \$50,000.

During the initial three-week period that the RRF program is open (expected to begin May 3, 2021), applications will be accepted from all eligible applicants, but the SBA will only process and fund priority group applications (discussed below). Thereafter, the SBA will continue to accept applications from all eligible applicants and will distribute funds in the order in which they are approved by the SBA. Priority group applications are those where the applicant has self-certified that it is a small business concern that is at least 51% owned and controlled by one or more individuals who are women, veterans, or socially and economically disadvantaged. Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities. Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged. Additional definitions for these priority group applicants can be found in the RRF Program Guide and the sample application (discussed below).

RRF application

The SBA has just announced that applications can be submitted starting May 3, 2021 at 12:00 p.m. EDT. There are three ways to apply for the RRF grants. The first is through a recognized SBA Restaurant Point-of-Sale Partner (listed on the SBA's website). The second is directly through the SBA portal on the SBA's website. The third is telephonically at (844) 279-8898; however, telephonic applications will have longer processing times.

Beginning on April 30, 2021 at 9:00 a.m. EDT, businesses that plan to apply directly through the SBA website can pre-register for the program. Businesses applying through a Point-of-Sale Partner are not required to pre-register.

These funds are expected to deplete very quickly. Therefore, in preparation for the May 3, 2021 launch, eligible businesses should be reviewing the official SBA guidance (including the sample application, available here) and gathering the applicable required documentation (including, federal tax returns for 2019 and 2020, bank statements for the past 3 months, point-of-sale reports, eligible expense documents, tax identification numbers and addresses for all owners of 20% or more equity, and SBA loan numbers and amounts for all PPP loans).

Contact us

The American Rescue Plan Act contemplates that the SBA will issue additional forms, regulations, and guidance in connection with the RRF program. We continue to monitor these rapid developments. Should you have any questions, please do not hesitate to contact John Moore, Kirstin Salzman, Jessica Zeratsky, Kyle Gilster, Christopher Peterson or your Husch Blackwell attorney.

Your Comprehensive COVID-19 Legal Resource

Since the pandemic's onset, Husch Blackwell has continually monitored state-by-state orders regarding capacity, masking, vaccines, and more. We regularly address your FAQs and provide you with easy-to-use COVID-19 tools about returning to work and navigating federal programs. Contact our industry-specific legal teams or your Husch Blackwell attorney to plan through and beyond the pandemic.